

# WINS PRINCIPLE TO GAIN NOTHING

## Government Gets Left-Handed Decision in Commodities Clause Cases.

## CONGRESS CAN NOW LEGISLATE FURTHER

Court Concedes the Hepburn  
Act to Be Constitutional, but  
Says the Government's Con-  
struction Has Been En-  
tirely Too Compre-  
hensive.

WASHINGTON, May 3.—It has been many a day since a decision of the Supreme Court of the United States has been received with so much interest as was manifested to-day in the decision of that court in what are known as the "common carrier" cases, affecting the anthracite coal-carrying railroads. These cases had been decided, and

the United States Circuit Court for the Eastern District of Pennsylvania, favorably to the railroads, in that the clause of the Hepburn rate law which prohibits interstate railroads from carrying commodities manufactured, mined or produced directly or indirectly by the roads was declared unconstitutional, and the general impression had been that that decision would be affirmed by the Supreme Court. Where-

When again it was found that the reversal was based on technical grounds, and the effect was really favorable to the railroads, sentiment took another turn, and those who had been anxiously awaiting the announcement of the result found themselves much puzzled.

The court's judgment was announced by Justice White, who, while he read from an elaborate printed opinion, declined to give out anything more than a summary, showing the net result of the court's findings. There was also surprise over the fact that there were

no elaborate dissenting opinions and, indeed, only one dissenting opinion of any kind. The dissent was announced by Justice Harlan, who, in a few words, stated that he did not follow the conclusion of the court on the one point that the law does not prohibit the railroad ownership of stock.

in commodities-producing companies.

**Analysis of Decision.**

Analyzed, Justice White's decision is that Congress did not transcend constitutional authority in the enactment of the commodities provision, but on the other hand it was held that the government's construction of the

provision had been entirely too comprehensive. As construed by the court, the sole object of the clause is to prevent carriers from being associated in interest with the commodities transported at the time of transportation hence that the law only pro-

hibited the transportation of articles when they have been produced by a railroad company, which has not, in fact, parted with them; when the company owns or controls in whole or in part the commodity to be transported; and when the company has an interest

direct or indirect in the commodity in a legal sense. It was especially held, however, that the prohibition does not apply to the ownership of stock in a producing company, but that a carrier may own stock in such a company and at the same time transport the product of that company.

Summed up, the act only compels companies to dissociate themselves from the products they carry, and the contention of the government that the law applies to the ownership of stock and prohibits the transportation of commodities simply because they have

It thus appears, first, that the commodities clause is a vital and operative statute with respect to all pro-

ducts, such as coal, which the railroads and the coal companies actually own at the time of the transportation, and that the railroads must sell such products to somebody else before they can lawfully ship them, and, second, that unless the act is promptly amended so as to include stock ownership, the rail-

**Effect of Decision.**  
The effect of the decision is favor

able to railroads and the government  
lost on practically all points except in  
the sustention of the principle involved.  
In holding that Congress had not gone  
beyond its authority in enacting the  
law the court conceded the right to  
legislate, and it is believed that if so  
disposed Congress might enlarge and

extend the scope of the provision. Hence, while the railroads gain a practical victory the government is not confronted by a constitutional barrier from further acting in the direction of control of the roads in the matter of the shipment of their own commodities.

The cases made their first appearance in the Supreme Court October 10 last. They were argued during the month of January and the decision has been anxiously awaited ever since the latter date.

The decision sustained the provision of the law exempting timber from the

As enacted, the law did not apply to the transportation of timber, and

In his dissenting opinion, Justice Harlan said: "As those cases are now determined wholly on a construction of the parts of the Hepburn act here in question, and as Congress, if it seek to amend that construction,

seems not may meet this construction by additional legislation. I content myself simply with an explanation of nonconcurrence in some of the views expressed by the court as to the meaning and scope of the act. In my judgment, the act reasonably and properly